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Story

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 286.

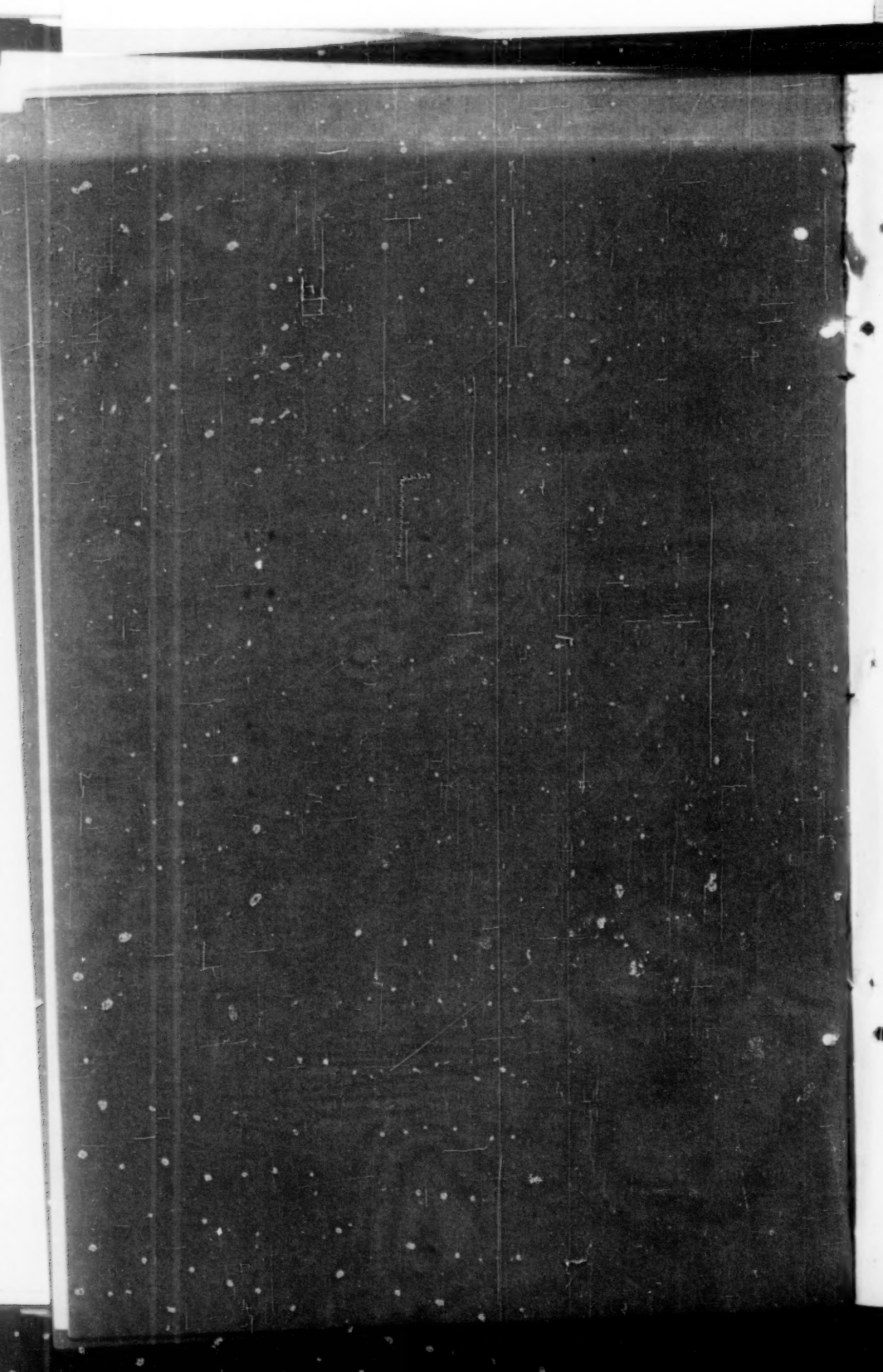
ANATOLE COUSIN, PLAINTIFF IN ERROR,

vs.

LOUIS F. GÉNÉRES, CHARLES BAQUIÉ, SURVIVORS OF ABAT, GÉNÉRES & CO., ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED NOVEMBER 12, 1870.



SUPREME COURT OF THE UNITED STATES

No. 286.

ANATOLE COUSIN, PLAINTIFF IN ERROR,

vs.

LOUIS F. GÉNÉRES, CHARLES BAQUIÉ, SURVIVORS OF ABAT, GÉNÉRES & CO., ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 *Petition.—Filed February 28th*, 1867.

The State of Louisiana, second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GÉNÉRES & CO. } No. 28746.

To the honorable the judge of the second district court of New Orleans :

The petition of Anatole Cousin, who resides in the parish of St. Tammany, the State of Louisiana, respectfully shows:

That the commercial firm of Abat, Génères & Co., on the fourth day of March, in the year eighteen hundred and sixty-two, in the city of New Orleans, subscribed a written acknowledgment and obligation, and thereby acknowledged that it received on that day from petitioner the sum of sixteen thousand seven hundred and fifteen dollars, and obligated themselves to petitioner to invest for the account of petitioner ten thousand dollars of said amount in city bonds of the city of New Orleans; and the balance of the money, to wit, six thousand seven hundred and fifteen dollars, the said firm obligated itself to invest in notes, the payment of which were secured by mortgage. The said written obligation is hereto annexed and made part hereof.

2 That the said firm, Abat, Génères & Co., was composed of Louis F. J. J. Leonce Abat, and Charles Baquié; that the said three last-named persons were, at the time said obligation was subscribed, *were* doing and transacting commercial business in the city of New Orleans, under the commercial firm and style of Abat, Génères & Co.

That the said firm is now dissolved by the death of the said Abat, who left a will that has been probated in the second district court of New Orleans.

By the said will Louis F. Génères was appointed testamentary executor of the said Abat, and he has been duly confirmed as such by said court, and as such is now acting.

That the said firm, Abat, Génères & Co., the said Génères individually, and in his capacity of testamentary *exector* of, the said Baquié, have been amicably requested to render an account of the management of the agency of the said firm, as hereinbefore fully set forth; but that they all neglected and refuse to render an account of their agency.

Wherefore petitioner prays that Louis F. Generes, and Charles Baquié, surviving partners of the said commercial firm, Abat, Génères & Co., and who reside in the city of New Orleans, and the said Louis F. Generes, as testamentary executor of the said J. J. Leonce Abat, be cited to appear and answer this petition, and after due proceedings, be condemned in solido to pay petitioner the sum of sixteen thousand seven hundred and fifteen dollars, with interest thereon at the rate of five per cent. per annum, from the 15th day of March, in the year eighteen hundred and sixty-two, and costs of suit, and petitioner prays for all further and general relief which the nature of the case require.

3 (Signed) J. AD. ROZIER, *Att'y.*

Letter mark'd C D.—*Filed February* 13*th*, 1870.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & CO. } No. 28746.

BONFOUCA, *le* 9 *Juin*, 1865.

MONSIEUR : Je vous accuse réception de la lettre confiée à Mr. Marigny. Je ne crois pas que la ville pensera jamais à payer un sou pour de l'argent mis dans un navire, dont la moitié des travailleurs poussait en avant et l'autre tirait en arrière, mais dans la lettre que vous m'écrivites pour m'engager à ce beau placement, vous me mentionniez qu'une partie de la somme serait réservée pour être placée en bons hypothécaires (c'était votre expression.) Aussi ai-je été étonné lorsque vous me donniez à entendre plus tard, dans une petite note au sujet de la confiscation de Butler, que le tout de la somme avait été livré à la ville. C'est de l'argent confédéré que je vous ai mis entre les mains, je le sais, mais je crois que j'aurais bien mieux fait de le mettre en espèces à cette époque, ce qui était ma ferme intention, que j'aurais dû tenir, et ne pas entendre à autre chose, mais en fin les regrets ou les recriminations sont chose hors de place en ce moment; j'ai votre promesse, sur la teneur même de votre reçu, de metre une partie de la somme en bons hypothécaires et j'espère que vous ne me renverrez pas pour le tout, aux kalendes grecques. J'attends une réponse.

Votre dévoué serviteur,
("Signed") ANATOLE COUSIN.

4 *Citation on foregoing petition.*

State of Louisiana, second dist. court of New Orleans, in the city of N. Orleans.

ANATOLE COUSIN
vs.
ABAT, GENÉRES & CO., & L. F. GENERES, test. ex'tor of J. J. Leonce Abat. } No. 28746.

Mr. Louis F. Generes individually, as one of the members of Abat, Generes & Co., and as testamentary executor of J. J. L. Abat, of New Orleans :

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the second district court of New Orleans, in ten days after the service hereof.

Witness the Honorable J. W. Thomas, judge of the said court, the 28th day of February, in the year of our Lord 1864.

(Signed) L. ARNAULD,
D'y Clerk.

Sheriff's return on foregoing citation.

Received March 1st, 1867, and on the 2d of the same month and year

I served copy of the within citation and accompanying petition on Louis F. Généres in person.
Returned same day.
(Signed) C. TROUARD,
D'y Sh'ff.

Citation on foregoing petition.

State of Louisiana, second district court of New Orleans, in the city of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GÉNÉRES & Co., & L. F. GÉNÉRES, ex'tr of J. J. L. Abat } No. 28746.

5 Mr. Charles Baquié individually, and as one of the members of Abat, Generes & Co., of New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the second district court of New Orleans, in ten days after the service hereof.
Witness the Honorable J. W. Thomas, judge of the said court, the 28th day of February, in the year of our Lord 1867.
(Signed) L'S ARNAULD,
D'y Clerk.

Sheriff return on foregoing citation.

Received March 1st, 1867, and on the 2d of same month and year I served copy of the within citation and accompanying petition on Charles Baquié in person. Returned same day.
(Signed) C. TROUARD,
D'y Sh'ff.

Answer of L. F. Généres.—Filed March 12th, 1867.

Second dist. court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GÉNÉRES & Co. } No. 28746.

Louis F. Généres, herein acting for himself and as testamentary executor of the late Leonce Abat, without prejudice to all his rights of legal exceptions, for answer to plaintiff's petition, says:
That he denies all and singular the allegations of the said petition, except what may be hereinafter admitted.
That, on or about the 4th of March, 1862, the late firm of Abat, Généres & Co. received from the plaintiff a sum of sixteen thousand seven hundred and fifteen dollars in confederate currency, with
6 special instructions to invest the same, in the manner stated in the receipt delivered by the said firm.
That the said firm, then acting as the agent of the said plaintiff, endeavored to carry out the views of their principal to best of their

ability, and made the investments which they were instructed and expected to do, as the whole is shown and set forth in the account which is hereunto annexed and is now expressly made a part of this answer; that by this account it is shown that the confederate paper of the plaintiff was invested in sixteen bonds of the city of New Orleans, and that a balance was left to his credit in the hands of the said firm, to wit, five hundred and fifty-five dollars in confederate currency.

That during the whole time of the war, the plaintiff was living within the confederate lines, and it was impossible to correspond with him; and meanwhile the said bonds and the said balance of confederate notes, were kept aside for the said plaintiff and as his property, until circumstances should permit him to take them.

That, since the re-establishment of free communications throughout the country, the said firm, at request of said plaintiff, rendered their account of agency, whereof the *agent* which is hereto annexed and referred to above is a duplicate.

And this respondent further says, that in and during the year 1862, the major-general then in command in New Orleans, issued a general order assessing a fine and contribution against the said plaintiff, upon the face of the sixteen bonds of the city of New Orleans, held by the said firm as the plaintiff's agents, so as aforesaid, which fine and contribution amounted to the sum of four thousand dollars, payable
7 in U. S. Treasury notes; and the said firm as the agents of the said plaintiffs, were compelled, by force of military authority, to pay the same, and did pay the said sum, in U. S. Treasury notes, for account of said plaintiff, on the 9th August, 1862, for all which the said plaintiff is liable unto the said firm.

Wherefore, your respondent now tenders into court, for the use and account of the plaintiff, the property held by the said late firm as his agents, viz, sixteen bonds of the city of New Orleans, of the sum of one thousand dollars each, and a package containing confederate notes, purporting upon their face to be worth the sum of five hundred and fifty-five dollars, being the balance remaining from the total amount of confederate currency left by said plaintiff in the possession of the said firm, as shewed on the account annexed to this answer; and he further prays to be hence dismissed at plaintiff's costs; and for general relief he will ever pray.

And assuming the character of the plaintiff in reconvention, he now prays that the plaintiff Anatole Cousin, be cited and be condemned to pay to these defendants the sum aforementioned of four thousand dollars in legal currency, with interest from the 9th of August, 1862, until fully paid, and costs. And he further prays for all other equitable & general relief as the case may require.

(Signed) CY. DUFOUR, *Coun'l.*

Account annexed to foregoing answer.

Mr. A. Cousin in ac't with Abat, Generes & Co.

CR.

1862, March 4th, by his check on Louisiana State Bank, payable & received in confederate notes $16,715

DR.

1862, March 18th. To deposited with Citizens' Bank, for the purchase of 10 bonds, of $100 each, of the city of New Orleans, as per instructions of Mr. A. Cousin	$10,000	
Commission for purchassez, 1 %	1000	
		10,100
		6,615
Amount br. forward.		
8 Amount brought from over		$1,615
There being no mortgage paper to be had at rates to meet the views of Mr. A. Cousin, the balance of the funds were held until the 20th May, 1862, the same being in confederate notes, when it was deemed prudent to invest them in city bonds, (which were then at a premium,) six bonds of $1,000 each; cost	$6,000	
Commission for investing	60	
		6,060
Bal. on hand 20th May 1862, in confed. notes		$555

New Orleans, 25 Feb'u'y, 1867.

(Signed) ABAT, GENERES & CO.

E. & O. E.

Citation on foregoing petition.

State of Louisiana, second district court of New Orleans, in the city of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

Mr. ANATOLE COUSIN:

You are hereby summoned to comply with the demand contained in the answer and demand in reconvention, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the second district court of New Orleans, in ten days after the service hereof.

Witness the Honorable J. W. Thomas, judge of the said court, the 15th day of March, in the year of our Lord, 1867.

(Signed) L. ARNAULD,
D'y Clerk.

Sheriff return on foregoing notice.

Received March 16th, 1867, and on the 22d day of same month & year served copy of the within citation and accompanying petition on Anatole Cousin, plaintiff herein, through F. A. Cousin, his agent, who ac-
9 cepted service thereof. Returned same day.

(Signed) JNO. O. LOZE,
D'y Sheriff.

Answer of C. Baquié.—Filed March March 15*th*, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co., & &. } No. 28746.

Charles Baquié, made defendant herein, for answers says that he denies all and singular the allegations of the plaintiff's petition; and he further says, that since the dissolution of the late firm of Abat, Generes & Co., the liquidation of the same has been carried on by Louis F. Genéres alone, and therefore this respondent joins in the separate answer made in this case by the said L. F. Generes, and adopt as his own all matters of defence pleaded by him against the pretensions of the plaintiff; and he prays for judgment in the manner set forth by the said Louis F. Generes, and for all general and equitable relief.

(Signed) CYPRIEN DUFOUR, *Att'y.*

Subpœna duces tecum.—Filed April 13 *& June* 13*th*, 1867.

State of Louisiana, second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENÉRES & Co. } No. 28746.

Saturday, 13th day of April, 1867. Present, the Hon. J. W. Thomas, judge.

On motion of J. Ad. Rozier, of counsel for plaintiff, it is ordered that the defendant do produce in open court, on the 16th instant, the letter addressed to the said firm, dated 22d February, 1867, and also the one addressed to Louis F. Généres, testamentary executor of J. J. Leonce Abat, of the same date, all said letters being written by plaintiff.

Sheriff return on foregoin' subpœna.

Copy of the within order on Abat in person, of the firm of Abat, Generes & Co. Returned same day.

(Signed) C. TROUARD,
Deputy Sheriff.

10 *Subpœna duces tecum.—Filed April* 15*th and June* 13*th*, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

On motion of J. Ad. Rozier, of counsel for plaintiff, it is ordered that A. L. Gaines, president of the Citizens' Bank, do produce in open court, on the 16th instant, the ledger and other books, in which are kept the account of Abat, Generes & Co., in the year 1862, 1863, 1864, 1865.

Sheriff return on foregoing subpœna.

Received April 15th, 1867. Same day, month, and year, served a copy of within subpœna duces tecum, on Gaines, president of the Citizens' Bank of New Orleans, personally. Returned same day.
(Signed) GEO. H. CASE,
D'y Sh'ff.

Order continuance, as entered on the minutes 16th April, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

This case, fixed for trial this day, is continued by preference.

Order continuance, as entered on the minutes 3d May, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

This case, fixed for trial this day, is continued by preference.

Subpœna duces tecum.—Filed May 18th, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

11 On motion of J. Ad. Rozier, of counsel for plaintiff, in the above-entitled suit, it is ordered that A. L. Gaines, president of the Citizens' Bank, in the city of New Orleans, do produce in open court, on the twenty-first instant, the journal, ledger, and other books kept by said bank, showing the account of Abat, Generes, & Co., with said bank in the years 1862, 1863, and 1864.

Sheriff return on foregoing subpœna.

Received May 20th, 1867, and on the 20th day of the same month, I served a copy of the within motion personally on J. G. Gaines.
Returned same day.
(Signed) ALLEN G. SHEUWELL,
D'y Sheriff.

Order continuance, as entered on the minutes May 21st, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

This case, fixed for trial this day, is continued by preference.

Supplemental answer and order.—Filed May 21st, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & CO., AND L. F. GENERES, test. ex. of Abat. } No. 28746.

The supplemental answer of Louis F. Generes, acting for himself and as the executor of Leonce Abat, and of Charles Bequié, for more certainty shews:

That the written acknowledgment and obligation sued upon was given for confederate treasury notes, received as stated in the original answer: that the check delivered by the plaintiff and in return of which said *said* obligation was issued, was payable and paid in confederate treasury notes; that the aforesaid confederate treasury notes were and of no legal value, having been made and issued for purposes
12 reprobated by law, and therefore, the consideration for the said written acknowledgment and obligation sued upon, was and is radically null and void.

Wherefore the defendants pray for leave to file this supplemental answer, as explanatory of the cause for which the obligation sued upon was given, and in order to define with more certainty the terms "confederate currency," used in the original petition; and they further pray that a copy of this supplemental answer be served upon the plaintiff; and as prayed for in the original petition, they pray for judgment.

(Signed) CYPRIEN DUFOUR,
For Defendants.

Order.

Let this supplemental answer be filed.
New Orleans, May 21st, 1867.
(Signed) J. W. THOMAS, *Judge.*

Sheriff return on foregoing petition.

Received May 23d, 1867, and on the 24th day of same month and year, served copy of the within supplemental answer on Anatole Cousin, plaintiff herein, by leaving the same in the hands of F. A. Cousin, his agent, who accepted service thereof. Returned same day.

(Signed) JNO. O. LOZE,
D'y Sh'ff.

Subpœna duces tecum, as entered on the minutes June 13th, 1870.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & CO. } No. 28746.

On motion of J. Ad. Rozier, of counsel for plaintiff, it is ordered that

defendants produce in court, on the 18th instant, the letter addressed to said firm, and the letter addressed to L. F. Generes, testamentary executor of J. J. L. Abat, both dated February 22d, 1867, and written by plaintiff; and that A. L. Gaines, president of Citizens' Bank produce in court on same day the ledger and other books in which are
13 kept the account of Abat, Generes & Co., in the years 1862, 1863, 1864, and 1851.

(Signed) JOSEPH HANLON,
D'y Clerk.

Sheriff return one foregoing subpœna.

Received June 13th, 1867, and on the same day, month, and year, service copy of the within subpœna duces tecum on A. L. Gaines, president of Citizens' Bank personally, and on Abat, & Generes, through L. F. Genéres, one of said firm, personally. Returned same day.

(Signed) JNO. O. LOZE,
D'y Sheriff.

Subpœna duces tecum.—Filed June 14th, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

On motion of J. Ad. Rozier, counsel for plaintiff in the above-entitled suit, it is ordered that Jules Blanc, president of the State Bank of Louisiana, do produce in open court, on Tuesday, the 18th day of June, instant, or on any other day this cause may be set for trial, the journal, ledger, and other books kept by said bank, showing the account of Abat, Généres & Co. with the said bank in the years 1862, 1863, and 1864.

Sheriff return on foregoing subpœna.

Received June 15th, 1867, and on the 17th day of the same month, same year, I served a copy of the within motion on Jules A. Blanc personally. Returned same day.

(Signed) ALLEN J. SHEUWELL,
D'y Sh'ff.

Document.—Filed June 18th, 1867.—Marked B. B.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, Aug. 11th, 1862.

Received of Abat, & Generes & Co., for account of Anatole
14 Cousin, four thousand dollars, being the amount of an assessment upon him for aiding the rebellion, and to be appropriated to the relief of the starving poor of New Orleans.

(Signed) DAVID C. G. FIELD,
Financial Clerk.

Letter.—Filed June 18th, 1867.—C.

NEW ORLEANS, *February 22d*, 1867.

Messrs. Abat, Généres & Co., and to Mr. Louis F. Généres, individually, & as testamentary executor of J. J. Leonce Abat, an to Mr. Charles Baquié.

GENTLEMEN: I hold your receipt and obligation, of which the following is a copy:

"Reçu de Mr. Anatole Cousin la somme de seize mille sept cent quinze piastres pour être investies pour son compte, dix mille piastres en bons de la ville, et la balance en billets hypothécaires.

"$16,715. Nouvelle Orléans, 4 Mars, 1862.

(Signé) "ABAT, GÉNÉRES & CO."

I hereby request you to render me an account of your agency, with regard to the same.

You will please leave your answer to this at the office of J. Ad. Rozier, esqr., Commercial Place.

Respectfully yours,

(Signed) ANATOLE COUSIN.

Letter.—Filed June 18th, 1867.—B.

NEW ORLEANS, *February 22d*, 1867.

Mr. Louis F. Généres, testamentary executor of J. J. Leonce Abat.

SIR: As you are the testamentary executor of J. J. Leonce Abat, I herewith present you my demand against the succession of the said Abat, the written obligation and receipt which I hold against the succession, as in the following words:

"Reçu de Mr. Anatole Cousin la somme de seize mille sept cent qui'ze piastres pour être investie pour son compte, dix mille piastres en bons de la ville et la balance en billets hypothécaires.

"$16,715. Nouvelle Orléans, 4 Mars, 1862.

(Signé) "ABAT, GÉNÉPES & CO."

I hold all the members of the firm Abat, Generes & Co. liable in solido. I therefore request you to place me on the tableau of distribution which you may file as a creditor of said succession, in the sum of sixteen thousand seven hundred and fifteen dollars, with interest thereon from the 4th day of March, 1862.

Abat, Generes & Co. have failed to render me an account of their agency with regard to the above obligation.

Very respectfully, yours,

(Signed) ANATOLE COUSIN.

Letter.—Filed June 18th, 1867.—D.

NEW ORLEANS, *February 27th*, 1867.

Messrs. Abat, Generes & Co., and to Mr. Louis F. Generes, individually and as testamentary executor of J. J. Leonce Abat, and Mr. Charles Baquié.

GENTLEMEN: Your letter of the 25th inst., addressed to Mr. Anatole Cousin was received on yesterday, together with the so-called account, referred to in the letter.

Being the counsel of Mr. Cousin he has left with me all instructions relative to the obligation you incurred, by the signing of the receipt referred to in his letter of the 22d instant to you.

The receipt acknowledges that the money left in your hands was lawful money of the United States; the attempt to make it out confederate money is inadmissible.

The basis of the so-called account, furnished by you to Mr.
16 Cousin, is confederate money currency; all of which Mr. Cousin denies.

Your so-called account of your agency and the statement therein, are wholly unsatisfactory and are objected in toto, and you are hereby accordingly advised. As instructed I will bring suit.

Very respectfully yours,

(Signed) J. AD. ROZIER,
Of Counsel for Mr. Anatole Cousin.

Left the original, of which this is an exact copy, personally with Louis F. Generes, Thursday, the 28th, , 1867, at his office.

(Signed) CH'S E. REYNES.

Lettre E.—Filed June 18th, 1867.—E.

BONFOUCA, PARISH OF ST. TAMMANY,
March 16th, 1867.

Mess. Abat, Generes & Co., and to Mr. Louis F. Generes, individually, and as testamentary executor of J. J. Leonce Abat, and Mr. Charles Baquié.

GENTLEMEN: My counsel, Mr. Rozier, has sent me a copy of your answer to my letter, and the accompanying account or rather the so-called account. These reached me on the 15th of the present month.

Mr. Rozier sends me also a copy of his answer to your letter of the 25th of February last. I have left the matter entirely in the hands of Mr. Rozier, and he has made you such answer as I would have made, had I been personally present, and such as he would have been authorized to make. You will please consider the answer as if I had written it myself, and fully adopt the same as my answer. Mr. Rozier, as instructed, has brought suit against you.

Your most ob't servant.

(Signed) ANATOLE COUSIN.

Document.—Filed June 18th, 1867.—C C.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, 9th August, 1862.

17 Anatole Cousin is hereby ordered to pay to Abat, Generes & Co., four thousand dollars, ($4,000,) being his proportion of the tax assessed by General Order No. 55, from these headquarters, paid by Abat, Generes & Co.

(Signed) BENJ. BUTLER,
Maj. Gen'l Cg.

Bank Account.—Filed June 18th, 1867.—D D.

ANATOLE COUSIN.

1861.			1861.		
Aug't 21	To 1 check	190 "	July 31	By amount from ledger No. 8	2,296 21
Sep't 4	" 1 "	100 "			
" 5	" 1 "	50 "			
" 26	" 1 "	100 "			
" "	" 1 "	80 89			
Oct. 3	" 1 "	3 "			
" 18	" 1 "	100 "			
Nov. 9	" 1 "	100 "			
" 13	" 1 "	50 "			
	To balance	1,522 32			
		2,296 21			
1862.			1862.		
March 5	To 1 check	16,715 "	Jan'y 31	By gen'l balance	1,522 32
July 30	" 1 "	300 "	Feb'y 7	Montg. & others	2,500 "
	Balance	1,222 32	" 10	Butler	5,000 "
			" 15	Bird	6,000 "
			" 17	Costa	2,000 "
			" 21	Casenave, P	1,215 "
		18,237 32			18,237 32
1862.			1862.		
Sept. 6	To contra from the F. Cousin	600 "	July 21	By gen'l balance	1,232 32
		622 32			
				Bank-book settled 8th Dec., 1865	1,222 32
		1,222 32			
			1863.		
	To sundries	622 32	July 31	By gen'l balance	622 32

18 *City bonds.—Filed 12th March, 1867.*

Issued in conformity with ordonance No. 5949 of the city council, 3d March, 1862.

1,000 1,000

City of New Orleans, State of Louisiana.

No. 124. $1,000

Know all men by these presents that the city of New Orleans is indebted to the bearer in the sum of one thousand dollars, which sum the said city engages to pay, in the current money of the Confederate States, at the office of the city treasurer, to said bearer, in ten years after the date hereof, with interest at the rate of six per cent. per annum, payable semi-annually, on the twentieth day of March and September of each year, on the delivery of the interest coupon attached.

New Orleans, March 20th, 1862.

(Signed) JOHN T. MONROE, *Mayor.*

CH. CULBERTSON, *Comptroller.*

ADAM GIFFEN, *Treasurer.*

N. B.—Sixteen bonds similar and alike to the foregoing one, (including the afore-described one,) and payable from six to ten years.

Coupons.

$30. City of New Orleans. $30.

City bond No. 124, for $1,000.

Interest coupon for thirty dollars, due in New Orleans, September 20th, 1862.

(Signed) A. GIFFEN, *Treasurer.*

N. B.—Two hundred and fifty-two coupons attached to the aforesaid sixteen bonds, (the one described included,) entirely similar to the one above described, and payable semi-annually, from 20th Sept. 1862, to 20th March, 1872.

Confederate notes.—Filed June 19th, 1867.

$50 Two years after date $50

The Confederate States of America,

No. 5317. 50 No. 5317.

19 C. Will pay to bearer C.

Fifty Dollars.

Richmond, Va., July 25th, 1861.

THOS. J. MILLER, *for Register.* R. M. PAYNE.

N. B.—Eleven notes (including the afore-described,) of different issues but of same denomination.

$5 Richmond, Va., September 2, 1861. $5

Six months after the ratification of a treaty of peace between the Confederate States and the United States, A

The Confederate States of America, No. 10,543

Will pay five dollars to bearer.

CR. KEM, *for Register.* W. W. CAGE, *Treas.*

Receipt of clerk.

This is to certify that Louis F. Generes, herein acting for himself, and as testamentary executor of the late Leonce Abat, has this day deposited in the hands of the clerk of the second district court of New Orleans, as a real tender to the plaintiff in the suit of Anatole Cousin vs. Abat, Generes & Co., &c., No. 28746 of said court, the following effects, viz:

1°. Sixteen bonds of the city of New Orleans of one thousand dollars each, the said sixteen bonds being marked No. 1 to 16, and filed this day by A. J. Villeré, d'y clerk, under No. 28746.

2°. A package containing confederate notes purporting upon their face to be worth the sum of five hundred and fifty-five dollars.

New Orleans, March 12th, 1867.

(Signed) A. J. VILLERÉ,
D'y Clerk.

Order, continuance as ordered in the minutes 18th June, 1867.

20 Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & CO. } No. 28746.

This case came on this day for trial, J. Ad. Rozier, for plaintiff; Cyprien Dufour, for defendants; when, pleading & evidence heard, it is ordered by the court that the case be continued until the 22d instant.

Testimony.—Filed June 18th, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & CO. } No. 28746.—Evidence.

Admitted that the firm of Abat, Generes & Co., at the time of the signing of the instrument in writing sued on was a commercial partnership;

That the partnership was composed of the persons mentioned in the petition.

Plaintiff offers in evidence the receipt marked "AA," filed this day.

The four letters introduced to prove ram ipsam, that is to say, that they were delivered & written to defendants on the respective dates of the letters.

Letters marked "B," "C," "D," "E."

Defendants offer in evidence the sixteen bonds numbered from 1 to 16.

The balance of the confederate notes, as per receipt of the clerk of this court.

General Order No. 30, from Major Gen'l Butler, prohibiting circulation of confederate notes (copy to be furnished.)

General Order No. 55 (copy to be furnished.)

The documents marked "BB" and "CC."

The document marked "DD."

CHARLES LAFITTE, sworn, says:

I know the firm of Abat, Generes & Co. On the 4th March, 1862, they were engaged as brokers & agents. They bought and sold paper.

Cross-examined:

I am a commission merchant and agent. I was in this city in March, 1862.

Case for plaintiff is closed here.

21 *For defendants.*

L. F. GENERES, sworn, says:

The receipt marked "AA" is in my handwriting. We received a check on the Louisiana State Bank for the amount designated in the receipt. The check was collected in confederate notes, the whole amount. I was paid by the bank in what was the currency at the time. They were notes issued by the government of the Confederate States, and

were the only currency. On the 4th March, 1862, Mr. Cousin called at my office, and wanted to invest the amount named on the receipt in paper endorsed by the house. I told him we could not give our signature during such troublesome times, and he then asked me how he could invest the money. I told him the city of New Orleans was about issuing a loan for a million of dollars, and that I had already been requested by some of my clients to subscribe to the loan for them. He then authorized me to buy $10,000 of these bonds. I included him to the amount of $10,000 in the subscription I made. The subscription, as I recollect, were received at the Bank of Louisiana. The commissioners met there to consider the lenders. I subscribed in the name of our firm for all. We subscribed for $210,000, which included the various sums of the parties for whom we were acting. Mr. Cousin's $10,000 was included in that amount. There were Messrs. Rochereau & Co. were included for $20,000; Jeannet, Quertier & Co., for $120,000; Mrs. Widow Carecleé for $7,000. All these were included in the $210,000. I could not find mortgage paper to invest the balance of the amount receipted for to Mr. Cousin. I kept the money until I discovered that General Butler was about to issue an order to stop the circulation of confederate notes. I then invested $6,000 more of Mr. Cousin's money in the same bonds. The bonds at that time were at a premium. We held on hand the balance of the confederate notes. From the time Mr. Cousin left me his check I did not see him until after the close of the war.
22 He resided over the lake. I recollect Gen'l Order No. 55, by which all persons who participated in the purchase of the city bonds, just alluded to, were fined. For the purchase of the $210,000 were made to pay over $52,000 to the Government. We paid in bank notes. They were current. Legal-tender notes were at a premium. I gave information to the general of the parties for whom we were acting. The receipt marked "BB," from D. E. G. Field, was given to us for account of A. Cousin.

Cross-examined:

The instructions about investing the money were given on the 4th March, the day of the deposit. The instrument "AA" was signed about the same time. I do not recollect telling him what kind of bonds that were to be issued. The term defense-bond was not known then. I merely said the city bonds that were about being issued. I never mentioned to him anything about the fact that the bonds were to be issued in accordance with ordinance No. 5949 of the city council, approved 3d March, 1862. We wrote a letter, offering to take $210,000 of the bonds in the name of Abat, Generes & Co. We did not furnish the city with the names of the parties for whom the bonds were taken. After the bonds were received by me I handed them over to the parties for whose account I bought them. I kept Mr. Cousin's on hand, waiting for him to call for them. I first laid aside ten bonds. The bonds were handed to Abat, Generes & Co., some time in April, when I received them. I selected a certain portion for each subscriber. Immediately after receiving them Mr. Cousin's were put aside separately, with his name on them. At the time I received the bonds I believe the city was imminent danger of being taken by the federal forces. I do not recollect the precise day wer received the bonds. We were expecting to receive them every day. We made no entries on our books as to the fact of the distribution of the bonds to the respective owners. As to the investment made on the 18th May, the six bonds I took for Mr. Cousin were taken from a lot of bonds we had on hand. Was upon information I

23 gave that Gen'l Butler gave the receipt filed. I was told by Mess'r Lafitte and Rochereau that if I would get orders on them from Gen'l Butler, that they would reimburse me, but not as regard Mr. Cousin. I was *was*, to my personal knowledge, that the check was paid in Confederate State notes. I did not present the check myself; was not present when the check was paid. The only currency in which checks were paid were confederate notes. I know that the check was paid in confederate notes because the bank only paid confederate notes. I do not recollect how the check was brought to the bank. I never saw the confederate notes in which the check was paid. When I say the bonds were at a premium, I mean on a basis of confederate treasury notes.

To Mr. Dufour:

The money was paid for the bonds on the 15th March, 1862.

L. BERNARD, sworn, says:

I am the cashier of the Louisiana State Bank now; have been since 1860 or 1861. I was in the office on the 4th March, 1862. The document marked "DD" is a transcript from the books. From the 17th September up to 19th May, 1862, we never received anything but confederate money, with the exception of some very small amount of city or State notes, and confederate money was the only money paid out during that time. All the items of 7th, 10th, 15th, 17th, and 21st of February, 1862, were notes collected by the bank for Mr. Cousin in confederate money: in all $16,715. On the 5th March, 1862, Mr. Cousin's account is debited with one check for $16,715. The settlements, exchanges between the banks, were made in confederate money. On the 5th March, when the check was paid, the bank was only paying confederate notes. At the time the check was drawn, Mr. Cousin had a balance of $1,522 32 in good money, which was paid in greenbacks, except $300, which was paid either in bank notes or greenbacks in July, 1862. This balance of $1,522 32 was a balance on an old account, when the banks suspended payment. The five notes alluded to were deposited in bank for collection on the 27th February, 1861; they were paid on the date as stated in the account. We gave notice in the papers to
24 those who had unmatured notes for collection in the bank to withdraw them if they were not satisfied to have them collected in confederate money.

To Mr. Rozier:

I did not see the check for $16,715 myself. I cannot tell whether the check was presented directly, or was deposited in another bank. I published the notice referred in two of the city papers, in French and English. We never gave any direct notice to each depositor. The only notice given was that in the papers.

CHARLES BAQUIÉ, sworn, says:

I am one of the defendants. The transaction as indicated by receipt, marked "AA," was commenced and carried out by Mr. Généres, who was then the senior resident partner of the house, as was the custom between us. I took no active part in the transaction. I was present at the time and place when the receipt was given against Mr. Cousins, & it was well understood that the bonds mentioned on the receipt were the bonds then about to be issued by the city. They were a general topic of conversation amongst business men as a mean of investment. I heard the conversation between Mr. Generes and Mr. Cousin; knew what the bonds

were that were spoken of. The bonds in court and filed are the bonds referred to in my testimony.

Cross-examined:

Mr. Cousin was in the habit, annually, of coming to our house, and making investment on the endorsement of the house. On this occasion, the 4th March, 1862, in pursuance of the policy adopted by the house, Mr. Generes refused to issue the signature of the house. It was then the bonds were alluded to as an eligible investment. The house was preparing to make a tender for a large amount of these bonds, and it was then agreed that Mr. Généres would increase the amount $10,000 for account of Mr. Cousin. The balance of the money remained with the house for investment in mortgage paper. I did not know for what purpose these bonds were issued. I did not know, at the time of the conversation, that the council had authorized the issue of bonds for a million of dollars for the defence of the city. I think the book-keeper was present at the conversation—Mr. Henry Généres. The conversation with Mr. L. F. Generes is the conversation I alluded to.

To Mr. Dufour:

It was the talk before the 3d March that the city would issue bonds for a million of dollars.

25 *Receipt.—Marked* "A A."—*Annexed to petition filed February 28th, 1867, and filed in evidence June 18th, 1867.*

Reçu de Mr. Anatole Cousin, la somme de seize mille sept cent quinze piastres pour être investie pour son compte, dix mille piastres en bons de la ville et la balance en billets hypothécaires.

$16,715.

(Signed) ABAT, GENERES & CO.

N'LLE ORLEANS, 4 MARS, 1862.

Subpœna duces tecum.—Filed 19th June, 1867.

Second dist. court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

On motion of Rozier, of counsel for plaintiff, it is ordered that the firm of Abat, Generes & Co. do produce in open court, on Saturday, the 22d instant, the ledger and journal kept by them in the year 1862, or any other day on which said cause may be fixed for trial.

Sheriff return on foregoing subpœna.

Received June 21st, 1867, and on the same day, month, and year served copy of the subpœna duces tecum on Abat, Generes & Co., through L. F. Generes, one of the firm, personally.

Returned same day.

(Signed) JNO. O. LOZE,
Dep'ty Sheriff.

Order continuance, as entered on the minutes 22d June, 1867.

Second dist. court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

This case, fixed for trial this day, is continued until Saturday, the 13th prox.

Subpœna duces tecum.—Filed July 10th, 1867.

26 Second dist. court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

On motion of J. Ad. Rozier, of counsel for plaintiff, it is ordered that Abat, Generes & Co. produce in court, on the 13th instant, the ledger journal kept by them in the year 1862.

Sheriff return on foregoing subpœna.

Received July 10th, 1867, and on the same day, month, and year served copy of the within subpœna duces tecum on L. F. Géneres, esq., personally.

(Signed) JNO. O. LOZE, *D'y Sh'ff.*

Document.—Marked "A. G."*—Filed July 13th, 1867.*

Deposit by Abat, Generes & Co.

CITIZENS' BANK.
New Orleans, 4th March, 1862.

Gold	"	"
Silver	"	"
Bank notes	1,200	"
Checks	508	35
Do	16,715	"
Do	750	
	19,173	35

Testimony and evidence.—Filed July 13th, 1867.

Second district court of New Orleans, Honorable J. W. Thomas, judge.

ANATOLE COUSIN
vs.
ABAT GENERES & Co. } No. 28746.

Defendants offer in evidence the document marked "A. G."

For defendants.

W. T. HEPP, sworn, says:

I am a member of the firm of D. Rochereau & Co. The name of the firm in 1862 was E. Rochereau & Co. We instructed Mr. Genéres to purchase, for our account, $25,000 in city bonds. They were the bonds about to be issued at that time. The reason we bought these bonds was because we had a large amount of balances in confederate paper, and, as we could not get mortgage paper, we thought it better to invest in these bonds than *than* to hold on to the confederate money. We invested in these bonds, not for ourselves, but for our clients, believing it to be for their best advantage. It was impossible, at that time, to find mortgage paper for confederate money. This was in March, 1862. We furnished to Mr. Généres our share of the tax imposed on these bonds by Gen'l Butler. We paid, I think, $10,000 in current money.

Cross-examined:

I knew of very few transactions where mortgage paper was bought for confederate money 1862. Real estate was bought at that time for confederate money. We were asking constantly for mortgage paper in March, 1862, for confederate money. The rate of discount was not in question. The rate of discount was not the objection. I made no investment in these city bonds. I would avoid them, so far as my private funds were concerned. We considered the city bonds better security than the confederate. When we had instructions from our clients not to invest in real estate, we invested for them in city bonds.

AARON HARRIS, sworn, says:

I was a broker in 1862. In March and April, 1862, I tried frequently to buy mortgage paper with confederate money, but did not succeed. Before the issue of the new bonds, the city had consolidated bonds—railroad bonds. In March, 1862, I bought ten bonds, the consolidated bonds at $1,550 per bond—$1,000 bonds. About the same time I bought 3 bonds, same, for $1,780 each, and one at $1,600 or thereabout; all $1,000 bonds. They were very difficult to be had at that time. In April I bought 10 or 12 bonds for $1,330 each, but I am not sure
28 *wether* they were consolidated or railroad bonds.

Cross-examined:

Confederate money was of value then; we could get anything we wanted for it, at high rates. Confederate money, at that time, was received in payment of debts, and property could be bought with it when the parties were willing to sell, but at enormous rate. A long time before the city fell, confederate notes were at 22 or 23 per cent. discount. Subsequently it went up to 240 and 250. $2 20 in confederate notes would bring $1 in gold in England at that time. I cannot say *say* that no mortgage paper was bought then for confederate money. It was the currency then, with city money, and some for bank notes.

HENRY GÉNÉRES, sworn, says:

I am acting as a clerk in the house of Abat, Generes & Co. I recollect the check given to the house in 1862 by Mr. Cousin. *I* was for $16,715. I deposited the check in the Citizens' Bank. It was not drawn by me. The deposit was made on the 4 March, 1862.

Cross-examined:

I have personal knowledge that the check was deposited in the Citizens' Bank. I did not deposit it myself. I know it because was on our book at the Citizens' Bank, and it was also on the Citizens' Bank book. The check was deposited with others on that day. I do not recollect who took the deposit to the bank; one of the clerks took it. The only way I know that the check was deposited, because it was entered on our book and on the bank book. I recollect the city-defense bonds. I recollect the $210,000 worth of these bonds bought by Generes & Co. They did not come in all at the same time. They were sent to the different parties for whom they were bought. Mr. Cousin's were placed in a package and put aside. I believe I did that myself. That was, I think, the 20th May. There were ten bonds put up for Mr. Cousin. I do not recollect when other bonds were put in the package. There were other bonds put in the package. They were put in the bank box and deposited in our own vault. The package was marked A. Cousin. We did not take the numbers of the bonds. Did not think it worth the trouble. After sending away the bonds,
29 I cannot recollect how many remained on hand on the 20th day of May. We charged Mr. Cousin with the bonds. All Mr. Cousin's was charged on the 20th May. I did not charge the bonds previously, because they were not delivered. Until the bonds were delivered, the matter was made the subject merely of a memorandum. The bonds of Mr. Cousin (16) were received on the 20th of May. I know of my own personal knowledge that the 16 bonds were received on the 20th of May, and charged. I cannot say if these 16 bonds came in all at once. The house was purchasing these bonds for parties. We got some bonds previous to 20th May, I believe. I can state positively that 16 bonds were put in a package and marked A. Cousin. I did not know if these bonds were charged. Abat, Généres & Co. had bonds; they may have got mixed together. Those that belonged to Abat, Généres & Co. were placed in a package by themselves in the vault.

To Mr. Dufour:

The document marked "A. G." is in my handwriting, and which I gave to the clerk when going to the bank to make the deposit.

JOHN G. GAINES, sworn, says:

I am president of the Citizens' Bank. I was a director in 1862. The paper marked "A. G." I brought into court this morning, and belongs to the Citizens' Bank. The check for $16,715 was paid in confederate money. All deposits were then received in confederate money.

Cross-examined:

All deposits then were payable in confederate money. That was the usual custom of all the banks. I know of no exception.

Testimony taken in open court.

Order continuance, as entered on the minutes 13th July, 1867.

Second dist. court of New Orleans.

ANATOLE COUSIN *vs.* ABAT, GENERES & CO. } No. 28746.

The trial of this case was resumed this day, when, after hearing fur-

ther evidence, the court order the same to be continued until the 16th instant.

30 *Document marked* "I. A."—*Filed July 16th*, 1869.

MAYORALITY OF NEW ORLEANS,
City Hall, day of 186 .

No. 5949.

Whereas the safety of the city of New Orleans being imperilled by the existence of the war now raging, and the presence of our enemies at the approaches of the city renders it of the greatest importance to the vital interest of the city—not only of the city, but of the whole southern confederacy—that immediate and ample means should be placed at the disposition of the public authorities to repel invasion, and for the prompt and efficient defence of the city of New Orleans and its approaches, be it therefore

Resolved, That the mayor of the city of New Orleans be, and he is hereby, authorized to issue bonds of the city in favor of the city treasurer and comptroller, by the city comptroller, for the sum of one million of dollars, payable in five equal installments of two hundred thousand dollars each, at six to ten years, inclusive, and bearing interest coupons at the rate of six per cent. per annum, payable semi-annually at the office of the city treasury.

Resolved, That for the extinguishment of said bonds on their maturity, there shall be created a sinking fund, to which shall be specially pledged fifty thousand dollars per annum of the revenue derived from the sale of the public markets of the city of New Orleans, which fund shall be invested in such securities as the finance committee of the common council may from time to time direct, and report to the common council their action thereon.

Resolved, That it shall be the duty of the common council to provide, in the month of January of each and every year, for the payment of the current interests due and payable on said bonds. And

Be it further resolved, That the chairman of the finance committee of the common council be, and they are hereby, fully authorized and empowered, to pay over said bonds to the committee of police safety
31 appointed by the common council of the city of New Orleans, as per resolution No. 5930, approved 29th February, A. D. 1862, in such sums as they may require, for the purchase of arms, munitions of war, provisions, or to provide means for the successful defence of the city and its approaches.

(Signed) J. MAGIONI,
President Board Assistant Alderman.

(Signed) S. P. DE LA BARRE,
President pro tem. Board of Alderman.

Approved March 3d, 1862.
(Signed) JOHN T. MONROE, *Mayor.*

A true copy:
(Signed) GEO. F. CHILDS, *Sec'ty.*

Testimony & evidence.—Filed July 16th, 1867.

Second dist. court of New Orleans.

ANAT. COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

Plaintiff offers in evidence the bank book. Defendants offer in evidence the letter marked "C. D."

Testimony for plaintiff.

JACOB BARKER, sworn, says:

I resided in this city in March, 1862. Confederate money was current, then, in ordinary transactions; I think investment could be made in that money. Confederate treasury notes and the issue of the banks of New Orleans were, at that time, of about equal value.

Cross-examined:

The bank stopped specie payments and the issue of their own notes in September, 1861, with the exception of the Southern Bank. My business then was dealing in gold, and foreign notes, and confederate notes some. About that time $100 in gold bought $174 in confederate notes; I do not know, at that time, if I dealt in mortgage notes. It is probable I took some, but am not certain. In one instance, about that time, I took most—for $5,000 @ $6,000 of mortgage paper. Mortgage notes was never a favorite security with me, as I had no time to examine the titles. I am strongly impressed with the idea that it was 1862 that I took the mortgage paper above mentioned.

To Mr. Rozier:

32 Question. Have the deposits in the Citizens' and Louisiana State Bank been ultimately paid in legal currency?

Answer. They did not generally; in some instances they did.

For defendants.

CHARLES LAFITTE, sworn, says:

I was doing business in March, 1862. The style of the firm was E. Quertier & Co. We were acting as agent for persons absent in Europe and the North. We used to invest their funds. As a general rule we preferred as security for our investments city mortgage paper. In March, 1862, we had between $300,000 to $400,000 of our clients' to invest. Probably two-thirds of this amount was in confederate notes; I tried to buy mortgage paper and stocks with it. I could not find any mortgage paper though offering to take paper for one year at one and two per cent. discount. I subscribed to the city loan through Mr. Généres. Altogether I instructed Mr. Généres to subscribe in or about $130,000 to these bonds. I determined to take these bonds because I could not find other securities for confederate paper *paper*; I paid a premium for these bonds; in those days these bonds were at a premium over confederate money. Soon after General Butler came he imposed a tax on Mr. Generes in the whole amount of the bonds he had taken; I paid $32,500 as my share of that tax; I paid that amount in current money, not in confederate paper. It was after the fleet had arrived that Mr. Generes procured my bonds; I paid for them before.

Cross-examined:

I could not make any investment in mortgage paper in March, 1862. It was not on account of the rate of discount; I' was on account of the money being shaking. The issue of the city banks was worth more than confederate notes; a large difference. In March, 1862, gold was worth 150 to 180 in confederate money; at that time I never saw the city banks' issue in circulation. The Citizens' Bank is solvent; the State Bank of Louisiana is able to pay its depositors, is now perfectly solvent.

33 *Rebutting evidence for plaintiff.*

T. COUSIN, sworn, says:

My brother Anatole, at the time that the document sued on was signed, was in the parish of St. Tammany, at his domicil. It was through my agency, acting for my brother, that the transaction referred to in said document was carried on. When I was about making the transaction with defendants, I stated to Mr. Generes that my brother desired to have his money secured by mortgage on property in the city. Mr. Generes said to me that there were city bonds which offered great security. I replied that these were not my instructions, and I would have to consult my brother. Had a check of my brother, in blank; I filled it up for the amount mentioned in the document; the check was given the same day that the receipt sued on was signed. I am neighbor of my brother, and know he was not in New Orleans on the 4th March, 1862; my brother came to the city, I think, about two or three weeks after that date. Mr. Generes never spoke to me about city bonds for a million of dollars, which were to be issued by the city of New Orleans. Mr. Generes spoke about State bonds with respect to matters personal to myself.

Cross-examined:

When Mr. Génères told me that mortgage paper was very hard to find, he advise' me to invest in city bonds; nothing more was stated by Mr. Génères to particularise the city bonds. After the conversation I stated I desired consult with my brother; and I did consult with him. My brother sent word to me through a messenger, that, as Mr. Generes said the city bonds were good, that he might invest half of the money in these bonds, and the other half in city mortgage paper; that Mr. Génères knew what was good. I went a little ahead of these instructions, and agreed that Mr. Generes should invest $10,000 in city bonds, secured by all the property of the city. I got the amount of the check from my brother; it was given to me on the other side
34 of the lake. It was fixed and given to me before I left the other side of the lake for the city; I cannot whether my brother, myself, or Mr. Génères filled the check; I think it was filled in the office of Mr. Genéres. I have not seen the check since I gave it to Mr. Génères. The transaction in regard to State bonds with myself, occurred a few days before the transaction of my brother. When I treated with Mr. Génères for the State bonds, they had not been signed by Gov. Moore. When I called on Mr. Generes in regard to my own affairs, there was nothing said of any other. The new State bonds, my first choice for my own investment, was mortgage paper, but when told by Mr. Génères that it was hard to find, I agreed to take State bonds; and I also took city railroad stock, to the extent of $4,000, which was all that Mr. Génères could give me; this stock was purchased at the rate of $200 a share. When I called on account of my brother and could

Testimony & evidence.—Filed July 16th, 1867.

Second dist. court of New Orleans.

ANAT. COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

Plaintiff offers in evidence the bank book. Defendants offer in evidence the letter marked "C. D."

Testimony for plaintiff.

JACOB BARKER, sworn, says:

I resided in this city in March, 1862. Confederate money was current, then, in ordinary transactions; I think investment could be made in that money. Confederate treasury notes and the issue of the banks of New Orleans were, at that time, of about equal value.

Cross-examined:

The bank stopped specie payments and the issue of their own notes in September, 1861, with the exception of the Southern Bank. My business then was dealing in gold, and foreign notes, and confederate notes some. About that time $100 in gold bought $174 in confederate notes; I do not know, at that time, if I dealt in mortgage notes. It is probable I took some, but am not certain. In one instance, about that time, I took most—for $5,000 @ $6,000 of mortgage paper. Mortgage notes was never a favorite security with me, as I had no time to examine the titles. I am strongly impressed with the idea that it was 1862 that I took the mortgage paper above mentioned.

To Mr. Rozier:

32 Question. Have the deposits in the Citizens' and Louisiana State Bank been ultimately paid in legal currency?

Answer. They did not generally; in some instances they did.

For defendants.

CHARLES LAFITTE, sworn, says:

I was doing business in March, 1862. The style of the firm was E. Quertier & Co. We were acting as agent for persons absent in Europe and the North. We used to invest their funds. As a general rule we preferred as security for our investments city mortgage paper. I' March, 1862, we had between $300,000 to $400,000 of our clients' to invest. Probably two-thirds of this amount was in confederate notes; I tried to buy mortgage paper and stocks with it. I could not find any mortgage paper though offering to take paper for one year at one and two per cent. discount. I subscribed to the city loan through Mr. Généres. Altogether I instructed Mr. Généres to subscribe in or about $130,000 to these bonds. I determined to take these bonds because I could not find other securities for confederate paper *paper*; I paid a premium for these bonds; in those days these bonds were at a premium over confederate money. Soon after General Butler came he imposed a tax on Mr. Generes in the whole amount of the bonds he had taken; I paid $32,500 as my share of that tax; I paid that amount in current money, not in confederate paper. It was after the fleet had arrived that Mr. Generes procured my bonds; I paid for them before.

Cross-examined:

I could not make any investment in mortgage paper in March, 1862. It was not on account of the rate of discount; I' was on account of the money being shaking. The issue of the city banks was worth more than confederate notes; a large difference. In March, 1862, gold was worth 150 to 180 in confederate money; at that time I never saw the city banks' issue in circulation. The Citizens' Bank is solvent; the State Bank of Louisiana is able to pay its depositors, is now perfectly solvent.

33 *Rebutting evidence for plaintiff.*

T. COUSIN, sworn, says:

My brother Anatole, at the time that the document sued on was signed, was in the parish of St. Tammany, at his domicil. It was through my agency, acting for my brother, that the transaction referred to in said document was carried on. When I was about making the transaction with defendants, I stated to Mr. Generes that my brother desired to have his money secured by mortgage on property in the city. Mr. Generes said to me that there were city bonds which offered great security. I replied that these were not my instructions, and I would have to consult my brother. Had a check of my brother, in blank; I filled it up for the amount mentioned in the document; the check was given the same day that the receipt sued on was signed. I am neighbor of my brother, and know he was not in New Orleans on the 4th March, 1862; my brother came to the city, I think, about two or three weeks after that date. Mr. Generes never spoke to me about city bonds for a million of dollars, which were to be issued by the city of New Orleans. Mr. Generes spoke about State bonds with respect to matters personal to myself.

Cross-examined:

When Mr. Généres told me that mortgage paper was very hard to find, he advise' me to invest in city bonds; nothing more was stated by Mr. Généres to particularise the city bonds. After the conversation I stated I desired consult with my brother; and I did consult with him. My brother sent word to me through a messenger, that, as Mr. Generes said the city bonds were good, that he might invest half of the money in these bonds, and the other half in city mortgage paper; that Mr. Généres knew what was good. I went a little ahead of these instructions, and agreed that Mr. Generes should invest $10,000 in city bonds, secured by all the property of the city. I got the amount of the check from my brother; it was given to me on the other side
34 of the lake. It was fixed and given to me before I left the other side of the lake for the city; I cannot whether my brother, myself, or Mr. Généres filled the check; I think it was filled in the office of Mr. Genéres. I have not seen the check since I gave it to Mr. Généres. The transaction in regard to State bonds with myself, occurred a few days before the transaction of my brother. When I treated with Mr. Généres for the State bonds, they had not been signed by Gov. Moore. When I called on Mr. Generes in regard to my own affairs, there was nothing said of any other. The new State bonds, my first choice for my own investment, was mortgage paper, but when told by Mr. Généres that it was hard to find, I agreed to take State bonds; and I also took city railroad stock, to the extent of $4,000, which was all that Mr. Généres could give me; this stock was purchased at the rate of $200 a share. When I called on account of my brother and could

not get mortgage paper for him, I asked for State bonds; but Mr. Géneres told me there was none to be had. It was then that Mr. Generes offered city bonds, stating that they might be procured; he could not get city railroad stocks.

To Mr. Rozier:

I came to New Orleans about the latter part of February, 1862. Mr. Generes had written to me and to my brother Anatole to come to the city and make our investments. I never communicated to my brother directly on the advice that Mr. Generes offered for account of plaintiff. State bonds were not yet signed. I never had any communication with my brother as to State bonds that had or had not been signed, or issued or not issued. I left the city the day after the date of the receipt sued on. I went home and was taken prisoner. I was brought here in January or February, 1863. I received the answer from my brother previous to the time I left the city, in 1862. I invested, on 3d March, 1862, $4,883 72, in purchase of three notes secured by mortgage, which I paid for by a check on the State Bank of Louisiana. Abat, Generes & Co. always advised the mortgage notes in which plaintiff invested. I do not know about city bonds. Mr. Généres referred to me in the conversation.

To Mr. Dufour:

The notes referred to belonged to the port folio of the house, and whenever Mr. A. Cousin wished to invest they were transferred to him, and endorsed by the house. After completing the transaction for plaintiff I did not ask Mr. Generes when I could procure the bonds. The investment I made myself of the $4,883 72 was for the purpose of enabling a lady to complete a house that was being built. The lady had been required to pay 12 per cent., but I gave her the money for 6 per cent.

To Mr. Rozier:

I' was never communicated to me by Mr. Généres, or any one else, that the city bonds were the defence bonds.

Mr. J. G. GAINES recalled and cross-examined:

I do not mean to say that all checks which were drawn on the banks in confederate times were made payable in special terms in confederate money. It is the usage of the banks to receive checks on other banks from customers, and to give them credit for the amount of said checks on the day of the deposit. The Citizens' and Louisiana State banks are solvent. We would send the check to the State Bank the next morning, and receive confederate money for them. The balances were paid in confederate money. We balanced our *our* accounts, and whichever bank had a balance due it received in confederate money.

Mr. A. COUSIN, sworn, says:

I am plaintiff in this case. I recollect the receipt of Abat, Generes & Co. sued on. I was in the country on the 4th March, 1862. Terrence Cousin attended to the business appertaining to the receipt. The amount was the product of the notes which appear in the bank book now in my hands. The amount is $16,715. I do not recollect ever having taken their notes without their endorsement. They charged me one per cent. for it. I signed the check, and my brother filled it up in the city. I saw the check; I received it from the bank. I tried everywhere to find it. I have looked everywhere I thought it might be

found. A bundle of checks, in which it was, was lost. There was not a word said about confederate money in it. Towards the end of February, 1862, I received a letter from Mr. Generes. I did not keep
36 the letter; it was lost. I have not been able to find it. I have looked for it everywhere. The contents of that letter were—it merely stated that their balance in bank for me from the notes; that he had found a good investment for me, and advised me to come to the city and see him. I went with the letter to my brother, and read it to him, and invited him to go to the city to see Mr. Généres. My brother, going to the city about his own business, told me he would look out for good investment, and told me if I approved of it I could him instructions to act in my name. He went to the city, and in a few days sent one of my sons to me apprising me that the investment spoken of. Knowing that Mr. Generes intended an investment of my money in city bonds, and thinking they were the city bonds heretofore on the market, I sent word to my brother to invest half of my money in those city bonds, and the other half in notes secured by mortgage. At the same time knowing the amount referred to Mr. Generes, $16,715, I told my brother he might invest the whole of that sum as I had directed. I knew nothing about the city defence bonds as described in doc. "J.A.' I never suspected anything of the kind. I knew nothing at all of these bonds until I heard that Gen'l Butler had laid a fine on those who had taken these bonds. This was in June or July, 1862. It was one previous that I had been in the city. During that year I resided continually at my house in St. Tammany. No communication was made to me about State bonds by Mr. Generes and my brother. When I came to the city 1862, I got a promise to get the bonds later. They were not ready—I mean to say being ready, that Mr. Generes had not them on hand. I remained in the city three or four days. The first list of those I saw upon whom fines were imposed the name of Abat, Generes & Co. appeared, but not mine; my name appeared on the second list. The first time it came to my knowledge from Abat, Generes & Co. of these war bonds was in 1865, after the war.

Cross-examined:

The first time I came to the city, after my visit in 1862, was in November, 1865. All this time I resided in my own house on
37 the other side of the lake. The letter, marked "C. D.," was written by me. When I drew the check for $16,715, I knew that my account in bank was larger. There were two different things—the money resulting from my business, and that resulting from the notes. I was aware that all the bills receivable were due in February, 1862. The reason why I drew the check for $16,715 was because I was asked for that amount—the amount accruing from the notes.

Question. In drawing this check for this amount, were you not aware that you were drawing on funds in confederate money?

Answer. I did not know it until 3 weeks after, when I came to the city, and then I learned the funds had been paid in confederate money, without my consent or knowledge.

Question. Did you take steps to furnish Mr. Generes with other currency when you found out that this was confederate money?

Answer. I had no reason. Mr. Generes made no complaint.

To Mr. Rozier:

When I heard that the money was in confederate notes—I mean that my friends told me so when I arrived in the city in or about the 20th March, 1862, when I was told that the banks received confederate

money and paid in confederate money. I have no particular knowledge that the notes were paid in confederate. My nephew told me that banks were paying in confederate notes.

To Mr. Dufour:

I was in the city previous to being there in 1862—in the spring of the foregoing year. I drew several checks, and the banks paid in confederate money, & no one complained.

T. COUSIN recalled:

The check that was given by my brother was an ordinary check, without any special terms as to the kind of money in which it was to be paid.

38 *Order continuance, as entered on the minutes 16th July, 1867.*

The trial of this case was resumed this day. After hearing further evidence, the court ordered the same to be continued until the 23d instant.

Testimony.—Filed July 23, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & CO. } No. 28746.

For plaintiff.

F. LEVASSUR, sworn, says:

I reside in New Orleans since 1847. In March, 1862, investment could be made on notes secured by mortgage. I made three investments myself of that character. I paid confederate treasury notes. They were the only currency then. On the 5th March, 1862, I could have bought for confederate money, city railroad stock, at $205 per share. The shares were $100 per share. I sold property on the 9th of May for confederate money. I sold the property, because I owed money. The city was captured on the 26th April. The federal lines in May, 1862, did not extend beyond the city side of the lake shore. In May, 1862, I owned a lot of lumber, and sold it for confederate notes, which I deposited in the Bank of Louisiana. I was afterwards paid in the issue of the Bank of Louisiana.

Cross-examined:

The funds I had in the Bank of Louisiana, I withdrew on the 25th of May, 1865, to the amount of $3,666. I withdrew a portion in July, 1862, and the remainder in 1865. On the 9th of May, 1862, Gen'l Butler came here. I sold my property, and got confederate funds. They were the funds I deposited in the Bank of Louisiana. I sold the property to liquidate debts. I owed $5,000, and the debts accruing from my wife last illness, which I wanted to pay. That was my object in selling. I had, at that time, mortgage notes out which I wanted to pay. A portion of the notes I owed were held by Mr. Chiappella. The notes
39 matured on the 16th May, 1862. I offered to pay these notes in May, 1862, before they matured. They declined to take confederate notes, and, rather than take it, they offered the notes for another

year without interest. I then dealt in lumber and bricks. I was not a broker. Plaintiff is an uncle of mine.

Testimony taken in open court.

Judgment.

The State of Louisiana, second district court of New Orleans.

ANATOLE COUSIN *vs.* ABAT, GENERES & Co. } No. 28746.

The trial of this case was resumed this day—J. Ad. Rozier for plaintiff; C. Dufour for defendants—when, after hearing further evidence and agreement of counsel, and the law and evidence being in favor thereof, it is ordered, adjudged, and decreed that there be judgment in favor of defendants, and that the reconventional demand of said defendants be dismissed, plaintiff to pay costs.

Judgment rendered July 23d, 1867. Judgment signed August 6th, 1867.

(Signed) J. W. THOMAS, *Judge.*

Bill of exception.—Filed July 23d, 1867.

Second dist. court of New Orleans.

ANATOLE COUSIN *vs.* ABAT, GENERES & Co. } No. 28746.

Be it remembered that, on the above-entitled suit, the defendants offered to prove by L. F. Generes and Henry Generes, witnesses on the part of defendants, that the written obligation sued on, signed by Abat, Generes & Co., and described in the petition of plaintiff, was given for confederate treasury notes; that the consideration of the said obligation was the giving a check on the part of the plaintiff at the time
40 the obligation was issued, and the same was payable and paid in confederate treasury notes. The counsel of plaintiff objected to the introduction of said testimony, on the ground that the written acknowledgment of defendant speaks for itself; that it acknowledges the receipt of lawful money; that no parole testimony can be introduced to vary or contradict said instrument of writing; that no parole testimony can be introduced to prove what was said or done at the time of signing such instrument; but the court overruled said objection, and permitted the said witnesses to testify as to said matters, and give parole testimony to aforesaid effect.

Be it remembered further, that the said defendants also offered to introduce in evidence certain documents or papers, in numbers 16, styled city bonds, and which bonds are referred to in the answers of the defendants, and also certain confederate treasury notes. The plaintiff objected to the introduction of the same, on the ground that the defendants cannot be permitted to allege or prove that they did any act which might be contrary to public policy, or which may have been illegal; but the court overruled these objections, and permitted all the said documents and confederate treasury notes to be introduced in evidence.

Whereupon the plaintiff prayed that this bill of exception be signed, which is accordingly done on this 23d day of July, A. D. 1867.

(Signed) J. W. THOMAS, *Judge.*

Rule for a new trial.—Filed July, 1867.

Second district court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

On motion of Rozier, of counsel for plaintiff, it is ordered that the defendants do show cause on Monday, the fifth day of August, A.
41 D. 1867, why a new trial should not be granted, on the following ground:

1°. That the judgment herein rendered against plaintiff in favor of defendants is contrary to law and evidence; that the court should have rendered a judgment in favor of plaintiff against defendants as prayed for; that the only correct portion of it is that portion of the judgment which dismissed the reconventional demand.

2°. That the court erred in admitting evidence on the part of defendants which should have been rejected. This appears by the bill of exception.

Sheriff return on foregoing rule.

Received August 1st, 1867, and on the 2d day of the same month and year I served a copy of the within rule on Abat, Generes & Co., through their attorney, C. Dufour, who accepted service of the same. Returned same day.

(Signed) ALLEN J. SHEWELL,
D'y Sheriff.

Rule submitted, as entered on the mintues Aug't 5th, 1867.

Second dist. court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

The rule herein for a new trial was submitted to the court for consideration.

New trial refused, as entered in the minutes Aug't 6th, 1867.

Second dist. court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 28746.

For the reasons orally assigned by the court this day, it is ordered that the rule taken herein by plaintiff for a new trial be dismissed.

Petition of appeal and order.—Filed February 25th, 1868.

Second dist. court of New Orleans.

42 ANATOLE COUSIN
vs.
ABAT, GENERES & CO., AND LOUIS F. GENERES, test. ex'r of J. J. L. Abat. } No. 28746.

To the honorable the judge of the second district court of New Orleans:

The petition of Anatole Cousin, in the suit of your petitioner vs. Abat, Generes & Co., and Louis F. Generes, testamentary executor of J. J. Leonce Abat, with respect, sheweth:

That a final judgment was rendered by this honorable court on the 23d day of July, A. D. 1867, in the cause of your petitioner vs. Abat, Generes & Co., and Louis F. Genéres, testamentary executor of J. J. Leonce Abat, number 28746, of the docket of this court, which said judgment was signed on the 26th day of August, 1867.

That petitioner is advised there is error in said judgment to his prejudice, and he, therefore, feels aggrieved.

Wherefore your petitioner prays that he may be allowed a devolutive appeal from said final judgment, and that the firm, Abat, Généres & Co., and Charles Baquie, individually, and as a member of said firm, and Louis F. Generes, both individually, and as testamentary executor of J. J. Leonce Abat, be duly cited to answer this petition of appeal. And petitioner prays for all general relief.

(Signed) J. AD. ROZIER.

Order on foregoing petition.

Let a devolutive appeal be allowed in this case as within prayed for, returnable to the supreme court of the State of Louisiana on the fifth Monday, in March, 1868, on the appellant giving bond and security in the sum of two hundred dollars, said bond to be conditioned as the law directs.

(Signed) J. W. THOMAS, *Judge.*

NEW ORLEANS, *Feb'y 25th*, 1868.

43 *Bond of appeal.—Filed Feb'y 25th*, 1868.

Know all men by these presents that we, Anatole Cousin and Firmin Le Vasseur, are held and firmly bound unto the firm of Abat, Generes & Co., unto Charles Baquié, individually, and as a member of said firm; and unto Louis F. Generes, individually, and as a member of said firm; and also as testamentary executor of J. J. Leonce Abat, their executors, administrators, and assigns, in the sum of two hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly, by these presents, sealed with our seals, and dated in the city of New Orleans, on this twenty-fifth day of February, A. D. 1868.

Whereas, the above-bounden Anatole Cousin has this day filed a petition of appeal from a final judgment rendered against him in the suit of Anatole Cousin vs. Abat, Generes & Co., and Louis F. Generes, testamentary executor, No. 28746, in the second district court of New Orleans, on the 23d day of July, A. D. 1867:

Now the condition of the above obligation is that the above-bound

Anatole Cousin shall prosecute his said appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise the said Firmin Le Vasseur shall be liable in his place.

(Signed) ANATOLE COUSIN,
By his counsel J. AD. ROZIER.

(Signed) FIRMIN LE VASSEUR.

NEW ORLEANS, *Feb'y 25th*, '68.

Agreement of counsel for transcript of appeal.—Filed July 23d, 1867.

Second dist. court of New Orleans.

ANATOLE COUSIN
vs.
ABAT, GENERES & CO. } No. 28746.

It is agreed that in case of an appeal to the supreme court, in-
44 asmuch as all the sixteen documents styled city bonds filed in evidence, numbered 1 to 16, inclusive, are all exactly similar and alike in every respect, it shall not be necessary in the transcript which will be made out by the clerk to copy each and all the said documents; but that one copy of any of said documents shall alone be copied, in order to save expenses. The same agreement is made with respect to the confederate treasury notes offered in evidence; only one of said notes shall be copied and inserted in the transcript, all of them being all similar and alike in every respect; the amount of said confederate notes being in all the sum of five hundred and fifty-five dollars.

JULY 23D, 1867.

The city bonds & confederate notes filed into court as a tender, may be sent on to the supreme court in package, which will be considered as a part of the transcript.

(Signed) CYPRIEN DUFOUR,
For Def'd'ts.

Certificate.

State of Louisiana, second district court of New Orleans.

I do hereby certify that the ninety-one foregoing pages contain a true and correct transcript of all the proceedings had, of all the evidence adduced, (except the order of Maj. Gen'l Butler in regard to confederate currency, which is not to be found amongst the papers of this suit,) and of all the documents filed & of record in this court in the matter of Anatole Cousin vs. Abat, Generes & Co., No. 28746 of the docket of this said court; the whole, according to agreement of counsel, herein filed and annexed as part of this transcript.

In testimony whereof I have hereunto set my hand and affixed the seal of this said second district court this twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-eight, and the ninety-second of the independence of the United States of America.

[SEAL.] (Signed) L. ARNAULD,
D'y Clerk.

45 Supreme court of the State of Louisiana.

Joinder of appellees in & to the appeal.—Filed March 31st, 1868.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 1746.—Supreme court.

The defendants & appellees now come into this hon. court, and do hereby join in the appeal taken by plaintiffs and appellants; and they respectfully pray that the judgment rendered by the lower court be so far amended as that the reconventional demand urged by defendants against plaintiffs, be granted, and that accordingly the said plaintiff be condemned to pay the sum of four thousand dollars, as prayed for in the answer of defendants.

(Signed) CYPRIEN DUFOUR,
Counsel.

Agreement as to transcript.—Filed April, 29th, 1869.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 1746.—Supreme court.

It is agreed that, in order to complete the record, that the orders of General Butler, referred to at page of the transcript (38,) & called General Orders Nos. 30 & 65, are correctly contained in the printed pamphlet hereunto annexed containing General Orders from Headquarters Department of the Gulf, issued by Major General B. F. Butler, and are to be considered as part of the said transcript.

(Signed) J. AD. ROZIER,
Att'y of Appellant.

(Signed) CYPRIEN DUFOUR,
For Appellees.

46 *Assignment of errors.—Filed Nov. 5th, 1869.*

Supreme court of the State of Louisiana.

ANATOLE COUSIN, APPELLANT,
vs.
ABAT, GENERES & Co., APPELLEES. } No. 1746.—Appeal from the second district court of New Orleans.

And now come Anatole Cousin, appellant & plaintiff in the above-entitled cause, by his attorney, and says:

That in the record, proceedings, and judgment of the lower court there is manifest error in this: The constitution of the State of Louisiana, adopted in convention, on 7th day of March, 1868, contains the following clause, which is numbered therein article 127, and is in the following words, to wit, "All agreements, the consideration of which was confederate money, notes, or bonds, are null and void, and shall not be enforced by the courts of this State." Appellant contends that the said clause is repugnant to that portion of article 1, section 10 of the Constitution of the United States, which reads thus: "No State shall pass any ex-post-facto law, or law impairing the obligation of contracts;" that the court a quâ erred in not maintaining the position taken by said plaintiff, as aforesaid.

Appellants protesting that the pleadings, evidence, and proceedings

had on said cause, do not show that the agreement in writing, the contract of mandate (the instrument sued on) was founded on confederate money, notes, or bonds; but say, on the contrary, the evidence establishes that the condsideration of the same was a good and valid consideration. The court, however, ruled that the consideration was illegal, & the article 127 of the constitution was applicable, and the said article was constitutional; and so decided.

Plaintiffs contended that even in case it should be found that the facts of the case are as ruled and decided by the lower court, still there is manifest error in the judgment; the consideration nevertheless is good.

47 Plaintiffs contend that the validity of contracts made within the territorial limit of the Confederate States, during the late war with the United States, must be tested by the constitution and laws of the government de facto which then existed in that jurisdiction.

That an executory contract, based on a loan of Confederate States treasury notes, money, or bonds, being valid by the lex loci contractus at the time it was entered into, may by enforced in the courts of this State acting under the Constitution and laws of the United States, although such notes by the Confederate States may have been in contravention of the policy and interests of the United States, and although the use of such notes in private contracts between citizens may remotely have contributed to the furtherance of the original illegal purpose for which they were issued.

In this case the lex loci contractus was in the State of Louisiana, and the contract was between citizens and residents of the State of Louisiana, as will more fully by the proofs herein.

That the decision of the lower court is contrary to the laws and Constitution of the United States, impairs the obligation of contracts, and errs in maintaining an ex-post-facto law, (see late case decided in the Supreme Court of the United States, in Thorengton vs. Smith & Hartley; also, Sheible vs. Bachs, 41 Alabama Rep., 433,) and all the authorities therein referred to.

The contract in this case was made within the territorial limit and jurisdiction of the Confederate States, a de facto government, hereinbefore stated.

Plaintiff says that, by the laws of nations, the said contract sued on is legal, and the courts of the country should sustain the position aforesaid, and the decisions of courts maintain the same position.

Plaintiffs again raise the same points and questions, and ask for a decision of the court on these points and questions.

Wherefore plaintiffs and appellants file this assignment of errors, and rely on their printed brief as shewing and discussing the other

48 errors of the lower court, and pray the court to render a judgment in favor of plaintiffs & appellants, as prayed for in his petition.

(Signed) J. AD. ROZIER,
Attorney of Plaintiff & Appellant.

Case submitted.—Extract from the minutes.

FRIDAY, *November 5th*, 1869.

The court was duly opened. Present, their honors James G. Taliaferro, Rufus K. Howell, W. W. Howe, associate justices; absent, John T. Ludeling, chief justice; W. G. Wyly, associate justice.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 1746.

This case was called for trial, and the court having heard argument from J. Ad. Rozier, esq., of counsel for plaintiff & appellant, and the same having been submitted without argument on the part of defendants & appell., by Cyprien Dufour, esq., of counsel, the same was taken under advisement by the court upon the briefs for both parties and the papers now on file.

Decree.—Extract from the minutes.

MONDAY, *November 15th*, 1869.

The court was duly opened, pursuant to adjournment.

49 Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

His honor Justice Howe pronounced the judgment and decree of the court in the following case:

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 1746.—On appeal from the second district court of New Orleans.

It is ordered and adjudged that the judgment appealed from be affirmed with costs.

Opinion of the court.—Filed Nov. 15th, 1869.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 1746.—Appeal from the 2d dist. court of N. O.

HOWE, J.:

The evidence in this case satisfies us that the plaintiff delivered to the defendant's firm a sum of confederate money to be invested, and the latter invested it, with the exception of a small portion, rendered in court, in bonds of the city of New Orleans, payable in the same currency.

Under such circumstances we are of opinion that the court a qua properly rejected the demand of the plaintiff. (Hunley vs. Scott, 19 Ann., 161; King vs. Huston, 19 Ann., 288; McCracken vs. Poole, 19 Ann., 359; Norton vs. Dawson, 19 Ann., 464.)

The plaintiff, appellant, has filed in this court an assignment of errors in which he alleges that the proceedings and judgment of the

50 lower court are manifestly erroneous in this, that the 127th article of the constitution of 1868, is repugnant to article 1, section 10, of the Constitution of the United States, which forbids the passage by a State of a law impairing the obligation of contracts. We presume this assignment was made through inadvertance. The judgment appealed from was rendered in July, 1867, before the constitution of 1868 was framed, and long before it was adopted.

The other points raised by the appellant that the Confederate States were a government de facto, and that obligations like those in suit in

this case, founded on the use and circulation of confederate treasury notes, should be enforced by our courts, have already been settled adversely to his views, by numerous decisions. (See Smith vs. Stewart, 21st Ann., p. 67, and the cases above cited.) We think the subject is one to which the rule of stare decisis is justly applicable, and we must therefore decline to reopen the controversy.

We are of opinion that the judge a quo did not err in dismissing the reconventional demand of the defendants. They were compelled by Major General Butler to pay for the support of the poor of New Orleans a certain percentage upon the amount of city-defense bonds, to which they had subscribed. They claimed to have thus paid $4,000 for account of the plaintiff upon the sixteen bonds for $1,000 each in which they had invested his confederate notes. We apprehend that the action of the commanding general was punitory, and that the payment by defendants in expiation of an offense cannot give them any claim against the plaintiff.

For the reasons given it is ordered and adjudged that the judgment appealed from be affirmed with costs.

51 *Petition for rehearing.—Filed Nov. 29th, 1869.*

In the supreme court of Louisiana.

ANATOLE COUSIN
vs.
ABAT, GENERES & CO. } No. 1746.

To the honorable the supreme court:

The plaintiff respectfully prays for a rehearing in the above-entitled cause, on the following grounds and authorities:

The doctrine of stare decisis, properly understood, should be firmly adhered to, as being based on the accumulated learning of authors, jurisconsults and courts. Lord Kenyon, who stood so firmly on the maxim super antiquas vias, truly said, "I cannot legislate, but by my industry I can discover what our predecessors have done, and I will tread in their footsteps." The adjudged cases, sought to be made sacred, emanating from one single court, must not stand isolated from the settled jurisprudence of Europe and America.

The court rules that the bargaining in confederate treasury notes, thereby giving credit and confidence to paper obligations issued by citizens in rebellion, is an unlawful cause of contract. It regards them as immoral and against public policy—and 12 Ann., 154, 10 Ann., 199, 1 Ann., 192, 5 Rob., 101, are the precedents quoted—elementary principles, plain axioms, the mere rudiments of law.

But is the case at bar included within that class of cases to which these cases refer? Surely the Supreme Court of the United States, and of our sister States, in their decisions on the questions before us, do not ignore this. The true and only question is as to a de facto government, with regard to civil rights, as between the citizens themselves, apart from the political aspect of the matter. Thus these courts advanced further, took cognizance of this department of jurisprudence, and solved that alone which is the sole question here, not mixing
52 matters which all law authors take for granted, all courts will concede, as not being open to controversy.

The Supreme Court of the United States, in its recent decison of

Thompson vs. Smith & Hartley, lays down: "It seems to follow, as a necessary consequence, from the actual supremacy of the insurgent government, as a belligerent, within the territory where confederate notes circulated, and the duty of civil obedience on the part of all who remained in it, that this currency must be regarded, in the courts of law in the same light as if it had been issued by a foreign government temporarily occupying a part of the territory of the United States. Contracts stipulating for payment of that currency cannot be regarded as made in aid of the foreign invasion in the one case, or of the domestic insurrection in the other. They have no necessary relation to the hostile government, whether invading or insurgent. They are transactions in the ordinary course of civil society, and though they may indirectly and remotely promote the ends of unlawful government, are without blame, except when proved to have been entered into with actual intent to further the invasion or insurrection. We cannot doubt that such contracts should be enforced in the courts of the United States, after the restoration of peace, to the extent of their obligation." They add: "But there is another description of government, called by publicists a goverment de facto, but which, perhaps, might be more aptly denominated a government of paramount force."

The political action of the General Government in such cases is one thing; those controversies growing out of the civil relations of men inhabiting the same territory, are totally distinct and different.

The Supreme Court has done nothing more than to recognize and enforce those well-settled principles of all civilized countries, applicable to such a state of facts. What was the government of paramount force at the time?

53 What do the other courts of the United States say on the same subject? "It is so plain, on authority of the writers of international law, that this government was a de facto government, that it seems unnecessary to cite authorities, or consume time in support of the proposition. A different conclusion would open a Pandora's box of evils to go forth and add to those already resting upon us. The State existed—there was a government of the State, which, though not acting in subordination to the Constitution of the United States, was a government in fact."—(Scheibles vs. Bacho, 41 Ala., 432; 3 Phillimore on International Law, chaps. 4, 5, 6, and 7, part 12; 41, 743, same; Wheaton's Note, 171, p. 522; ib. 580; Alabama, XL, p. 462.)

In Virginia, Grattan, vol. 18, p. 713; in Kentucky—in fact all the courts in the South, most of them composed of judges appointed under the military regime, have decided in the same manner as the Supreme Court of the United States. Gen. Halleck, a military authority, lays down the same general principles.

At the close of the war the Secretary of War reported to Congress one million of men under arms in the Federal Army—this after an unprecedented contest lasting four years.

What is the use, on the part of authors, to make a distinction between a government de facto and de jure, if the first means nothing unless success is achieved? In truth, this would be deifying success.

By the decisions of the Supreme Court of the United States, (2 Black, 666-'7-'8; The Vance, 2 Wallace, 258; and Mrs. Alexander's cotton, ib. 404,) the inhabitants, in consequence of their mere residence in an insurrectionary district, are placed out of the pale of the protection of the General Government, and their property made liable to condemnation as that of enemies.

These questions growing out of a state of civil war, are within the peculiar province of the national court to settle—more especially
54 in this complex system of a union of States.

A State court decides that the confederate government was not a de facto government, in direct conflict with the Supreme Court of the United States! In the courts of the United States, sitting in Louisiana, presided over by a judge of the Supreme Court of the United States, decisions will be rendered enforcing contracts during the late war, notwithstanding they may be predicated upon a loan of confederate treasury notes; whilst on the same day, and at the same hour, and in the same city, State courts will be deciding that these contracts were immoral and contrary to public policy, and in aid of the rebellion.

How can foreign publicists understand that, under our federal system of government, State courts determine questions of international law, pertaining to the relations of the inhabitants of insurgent States towards the General Government—to the legal political held amongst themselves—diametrically opposite to that august tribunal, specially organized to adjudicate on such foreign, national, and State controversies?

Foreign governments will certainly look upon this as impairing our nationality.

The doctrine of stare decisis is really applicable in our favor, even if we leave out of consideration the decision of this court in Emerson vs. Lee, which ruled correctly on the matter of Confederate money.

The decisions of the Supreme Court, as the appellate and superior court, are the true precedents, if it were on the score of uniformity alone, and to avoid conflicting decisions, whereby the great landmarks of property will be unsettled, and contracts and titles subverted. In the State forum your contract is stigmatized as immoral and contrary to public policy, whilst in the federal one the sacredness of agreements will be upheld.

The court of cassation sustains the doctrine of a de facto government in emphatic language: "L'autorité public n'est jamais censée, cesser;" or else barbarism and anarchy. The most sacred duties of life the commonest offices of civil life, could not be carried out; there would be no administration of justice. The relation of protec-
55 tion and allegiance, or the reciprocity of right and obligation, are the rights of the masses. Christianity itself teaches this.

The decisions of this court, maintaining the article 127 of the constitution, impair the obligation of contracts, and sustains an ex-post facto law.

Will this honorable court insist on maintaining this legal position, when so formidable an array of authorities, American and European, all concur with marked unanimity, based on what produces the greater good to mankind, in condemning it?

Respectfully submitted,

(Signed) J. AD. ROZIER.

The court is also referred to the points made in the brief of plaintiff, and authorities therein cited, as grounds relied on for a rehearing, and make the same a part hereof.

(Signed) J. AD. ROZIER.

Rehearing refused.—Extract from the minutes.

MONDAY, *December 13th*, 1869.

The court was duly opened, pursuant to adjournment.

Present, their honors James G. Taliaferro, W. G. Wyly, William W. Howe, associate justices; absent, John T. Ludeling, chief justice; Rufus K. Howell, associate justice.

His honor Justice Taliaferro, pronounced the judgment and decree of the court in the following case:

56 ANATOLE COUSIN *vs.* ABAT, GENERES & CO. } No. 1746.

It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.

ANATOLE COUSIN *vs.* ABAT, GENERES & CO.

The petition of Anatole Cousin respectfully represents that he brought a suit against Abat, Generes & Co., a commercial firm domicilled in the city of New Orleans. The suit was brought in the 2d district court of New Orleans, and was founded on an agreement dated on 4 March, 1862, by which the said Abat, Generes & Co. acknowledged to have rec'd from your petitioner the sum of $16,715, of which they obligated themselves to invest $10,000 in city bonds of city of New Orleans, and the remainder, $6,715, in notes secured by mortgage.

The suit was brought to enforce the liability of the defendants for not investing according to the obligation, and the court, concluding from the evidence, that the sum of $16,715 had been received by defendants, confederate money, declared that under the law of Louisiana the plaintiff could not enforce the contract.

From this judgment there was an appeal to the supreme court of the State, and that court, in November, 1869, affirmed the judgment.

By the constitution of the State of Louisiana, adopted March 7, 1868, art. 127, it is declared "that all agreements the consideration of which was confederate money, notes, or bonds. are null and void, and
57 shall not be enforced by the courts of this State."

The obligation between the parties was made at a time when they were all within the confederate lines, and therefore there was no violation of any principle of non-intercourse.

The petitioner further represents that there was neither allegation nor evidence that the agreement was entered into with any design to aid the rebellion, or with any other illegal design.

The petitioner now complains that while the principles of law as recognized by the Supreme Court of the United States contracts of this nature are held valid, the decision of the supreme court and the constitution of the State, as above quoted, violates the obligation of the contract, and he is therefore entitled to a writ of error under the 25th sec. of the judiciary act, directed to the supreme court of the State, returnable to the next term of the Supreme Court of the United States, to be held on the 1st Monday in Dec'r next.

Your petitioner here presents a certified copy of the proceedings in said cause, and also a bond in the sum of $500 for the prosecution of said writ of error.

New Orleans, 7 June, 1870.

(Signed) J. AD. ROZIER,
Att'y of Petitioner.

Supreme court of La.

Filed June 29th, 1870.

(Signed) M. P. JULIAN.
Dep'y Clerk.

Writ of error.

ANATOLE COUSIN.
vs.
ABAT, GENERES & CO.

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana greeting:

58 Because in the record of proceeding, as also in the rendition of judgment of a plea which is in said supreme court before you, or some of you (being the highest court of law & equity of said State in which a decision can be had) in said suit between Anatole Cousin, the appellant in said court, case No. 1746, and the commercial firm of Abat, Generes & Co., (which was composed of Louis F. Generes, J. J. Leonce Abat, and Charles Baquie, the said Abat having died, and the said Generes having been duly appointed his executor,) in which was drawn in question the validity of certain laws and certain provisions of the constitution of the State, on the ground of their being repugnant to that provision of the Constitution of the United States which prohibits the States from passing any laws impairing the obligation of contracts, and the decision was in favor of the validity of said laws and constitutional provisions, manifest injury has happened to the great damage of said Anatole Cousin, as by the complaint and judgment appears:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 1st Monday December next, in said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the error may be corrected according to law.

Witness the Hon. Salmon P. Chase, Chief Justice of said Supreme Court the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-nine.

(Signed) D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

59 *Writ of error bond.*

Supreme court of La.

Filed June 29th, 1870.
(Signed) M. P. JULIAN,
Dep'y Clerk.

ANATOLE COUSIN
vs.
ABAT, GÉNÉRÉS & CO.

Know all men by these presents that we, Anatole Cousin and Francis A. Cousin are held and firmly bound to the commercial firm of Abat, Generes & Co., in the sum of five hundred dollars, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals this 7th June, 1870.

Whereas in the supreme court of the State of Louisiana, to wit, in November, 1869, in a suit pending in said court, wherein the said Anatole Cousin was appellant, and the said Abat, Generés & Co. were appellees, judgment was rendered for the said appellees, Abat, Generés & Co., and against the said Anatole Cousin; and the said Anatole Cousin, having obtained a writ of error to the Supreme Court of the
60 United States to reverse such judgment, and having lodged a copy of said writ of error in the clerk's office in said supreme court of the State; and also a citation directed to the said Abat, Generes & Co., admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington on the 1st Monday of December next:

Now the condition of the above obligation is such, that if the said Anatole Cousin shall prosecute by said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; or else to remain in full force and virtue.

(Signed) ANATOLE COUSIN. [L. S.]
(") F. A. COUSIN. [L. S.]

I hereby certify that F. A. Cousin is a good and solvent security for the sum of five hundred dollars.

$500 surety. (Signed) F. B. VINOT.

Approved June 8th, 1870.
(Signed) JOSEPH P. BRADLEY,
Asso. Justice Supreme Court U. S.

Citation.

UNITED STATES OF AMERICA:

61 The President of the United States to Louis Generes, Charles Baquie, surviving members of the firm of Abat, Generes & Co., and Louis F. Generes, executor of J. J. Leonce Abat, the member of the said firm now deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the

clerk's office of the Supreme Court of the United States, wherein Anatole Cousin is plaintiff and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice Supreme Court of the United States, this 8th June, anno Domini, 1870.

(Signed) JOSEPH P. BRADLEY,
Asso. Justice Sup. Court U. S.

62 *Sheriff's return.*

Supreme court of the State of La.

ANATOLE COUSIN
vs.
ABAT, GENERES & Co. } No. 1746.

Received August 3rd, 1870, and on the same day, month, and year, I served a copy of the within citation in error, personally on Cyprien Dufour, att'y of record. Returned same day.

(Signed) L. E. GARDETTE,
Dep'y Sh'ff.

L. E. Gardette, being duly sworn, deposes that all the facts of his return are true and correct.

(Signed) L. E. GARDETTE,
Dep'y Sh'ff.

Sworn to and subscribed before me this the 8th day of August, 1870.

[S. C'T SEAL.] (Signed) M. P. JULIAN,
Dep'y Clerk.

Certificate.

United States of America, supreme court, E. D. State of Louisiana.

I, M. P. Julian, dep'y clerk of the supreme court for the eastern district, do hereby certify that the foregoing sixty-two pages, contain a true copy of the transcript of the proceedings had in the second
63 district court for the parish of Orleans, in a certain suit wherein Anatole Cousin was plaintiff, and Abat, Generes & Co. were defendants; and also of the proceedings had in this supreme court on the appeal taken by said Anatole Cousin, which appeal is now on the files thereof, under No. 1746.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 15th day of September, anno Domini 1870, and in the ninety-fifth year of the independence of the U. S. of America.

[SEAL.] M. P. JULIAN,
Dep'y Clerk.

64 THE UNITED STATES OF AMERICA:

The President of the United States to Louis F. Generes, Charles Baquié, surviving members of the firm of Abat, Generes & Co., and Louis F. Generes, executor of J. J. Leonce Abat, the member of said firm now deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Anatole Cousin is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this the eight day of June, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] (Signed) JOS. P. BRADLEY,
Asso. Justice Sup. Court U. S.

A true copy:

M. P. JULIAN,
Dep'y Clerk, Sup. Court State of La.

(Indorsements:)

65 Supreme court of the State of Louisiana. No. 1746. Anatole Cousin vs. Abat, Générés & Co. Citation in error. For service on Cyprien Dufour, att'y for Abat, Generes & Co.

Received August 3d, 1870, and on the same day, month, and year, I served a copy of the within citation in error, personally, on Cypren Dufour, attorney of record. Returned same day.

L. E. GARDETT,
D'y Sh.

L. E. Gardette, being duly sworn, deposes that all the facts of his return are true and correct.

L. E. GARDETT,
D'y Sheriff.

Sworn to and subscribed before me this the 8th day of August, 1870.

M. P. JULIAN,
Dep'y Clerk.

66 UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record of proceedings as also in the rendition of judgment of a plea which is in said supreme court before you, or some of you, being the highest court of law & equity of said State in which a decision can be had in said suit between Anatole Cousin, the appellant, in said court, case No. 1746, and the commercial firm of Abat, Generes & Co. (which was composed of Louis F. Generes, J. J. Leonce Abat and Charles Baquie, the said Abat having died, and the said Generes having been duly appointed his executor,) in which was drawn in ques-

tion the validity of certain laws and certain provisions of the constitution of the State, on the ground of their being repugnant to that provision of the Constitution of the United States which prohibits the States from passing any laws impairing the obligation of contracts, and the decision was in favor of the validity of said laws and constitutional provisions, manifest injury has happened to the great damage of
67 said Anatole Cousin, as by the complaint and judgment appears:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 1st Monday December next, in said Supreme Court, to be then and there held, that the record and proceeding aforesaid, being inspected, the error may be corrected according to law.

Witness the Hon. Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-nine.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

68 (Indorsed:) Writ of error. Anatole Cousin vs. Abat, Generes & Co. Allowed June 8th, 1870. Jo's P. Bradley, asso. justice Sup. C't U. S.

69 UNITED STATES OF AMERICA:

[SEAL.] To Louis Generes, Charles Baquie, surviving members of the firm of Abat, Generes & Co., and Lous F. Generes, executor of J. J. Leonce Abat, the member of said firm now deceased:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden in Washington, on the 1st Monday December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein Anatole Cousin is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice Supreme Court of the United States, this 8th June, anno Domini 1870.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

(Indorsements:)

Citation. Anatole Cousin vs. Abat, Generes & Co. Supreme court of La. Filed June , 1870. M. P. Julian, d'p'y clerk. Filed 30 November, 1870.

Sheriff's return, (duplicate.)

Received August 3rd, 1870, and on the same day, month, and year, I served a copy of the within citation in error, personally, on Cyprien Dufour, att'y of record. Returned same day.

L. E. GARDETT,
D'y Sheriff.

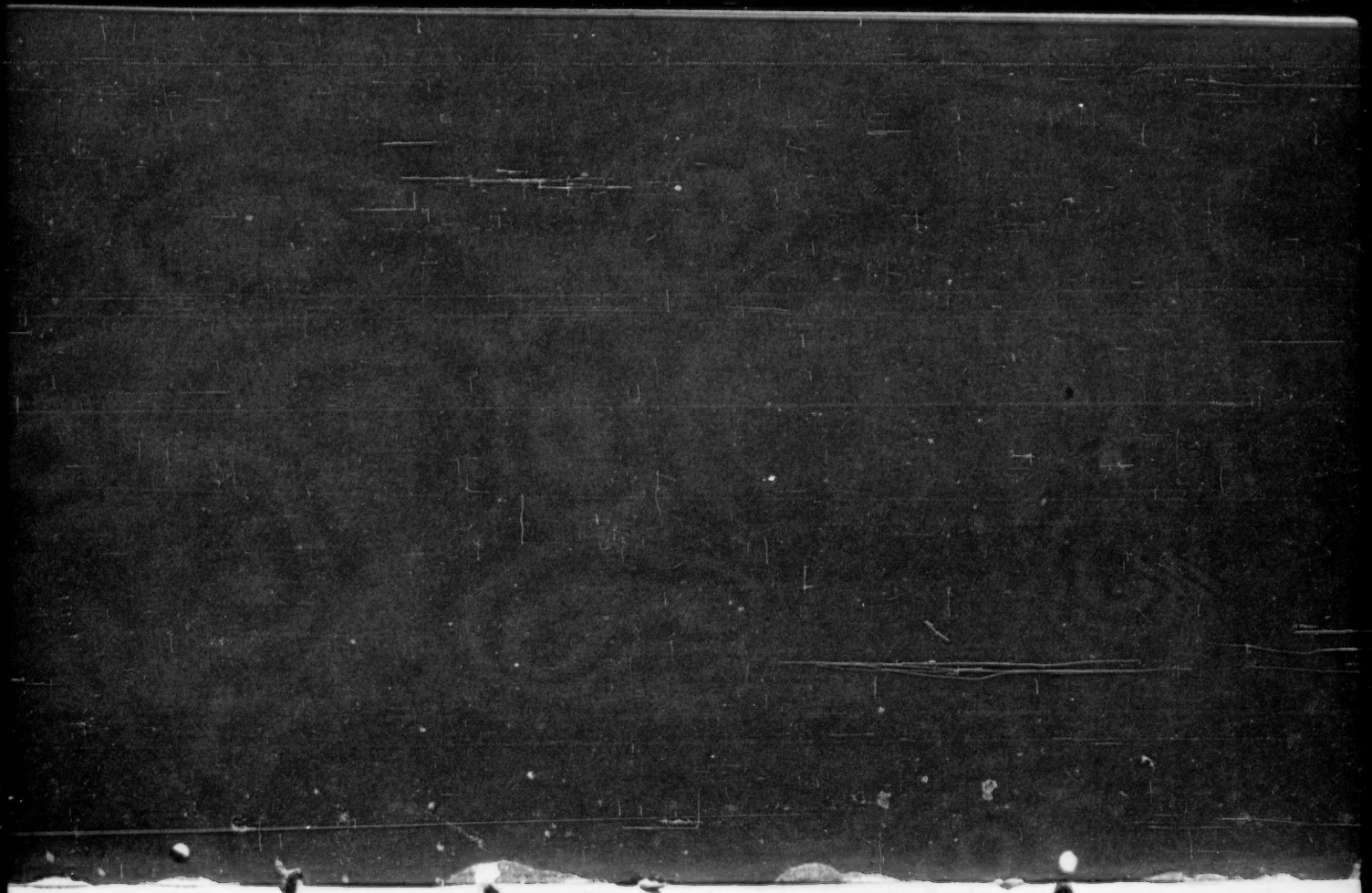
L. E. Gardette, being duly sworn, deposes that all the facts of his return are true and correct.

L. E. GARDETT,
D'y Sheriff.

Sworn to and subscribed before me this 8th day of August, 1870.

M. P. JULIAN,
Dep'y Clerk.

(Indorsement on cover:) Louisiana sup. court. No. 286. Anatole Cousin, plaintiff in error, vs. Louis F. Generes, Charles Baquié, surv'rs of Abat, Generes & Co. et al. Filed 12th November, 1870.



Supreme Court of the United States.

No. 286

Anatole Cousin, Plaintiff in Error
vs.
Louis F. Générès, & Charles Baquié, survivors of Abat Générès & Co., et al.

In error to the Supreme Court of the State of Louisiana.

MOTION TO DISMISS.

On motion of Louis Janin and Counsel for the defendants in error, it is ordered that of Counsel for the plaintiff in error, show cause on the at 11 o'clock A. M. why this writ of error should not be dismissed, for want of jurisdiction and on the grounds herewith submitted.

Grounds for motion.

This is a writ of error to the Supreme Court of the State of Louisiana, under the 25th section of the Judiciary Act, of 1789.

The Supreme Court of Louisiana states its views of the facts and of the law of the case in the following few words, (p. 33 of the Record) to wit:

"The evidence in this case satisfies us that the plaintiff delivered to the defendant's firm a sum of confederate money to be invested, and the latter invested it, with the exception of a small portion, rendered in Court, in bonds of the City of New Orleans, payable in the same currency."

"Under such circumstances we are of opinion that the Court *a qua* properly rejected the demand of the plaintiff."

This is the judgement of the State Court, which this Court is requested to revise.

This writ of error must undoubtedly be dismissed, under the authority of the recent case of Bethel vs. E. A. Demaret, widow of J. T. Hawkins, 10 Wall. 537.

That was another Louisiana case, which presented precisely the same state of facts and question of law, as the case now before the Court. A short extract from the opinion of this Court suffices to show the absolute identity of the two cases. "The Court say: "The suit was brought by Bethel against the defendants in a district Court of the State to enforce a mortgage given to secure the payment of two notes of $ 7.500 each, given by them for the loan of confederate currency, on 2d April 1862."

"The Court say, in its opinion in the present case, that "he [the plaintiff in error] is endeavoring to enforce a contract, the consideration of which is confederate currency. The nullity of contracts founded upon that unlawful currency has frequently been determined."

This Court then concludes its opinion thus: "As no federal question appears in the record, the motion to dismiss must be granted."

Louis Jan
of Counsel

Supreme Court of the United States.

No. 286

Anatole Cousin, Plaintiff in Error
vs.
Louis F. Générès, & Charles Baquié, survivors of Abat Générès & Co., et al.

In error to the Supreme Court of the State of Louisiana.

MOTION TO DISMISS.

On motion of Louis Janin and Counsel for the defendants in error, it is ordered that of Counsel for the plaintiff in error, show cause on the at 11 o'clock A. M. why this writ of error should not be dismissed, for want of jurisdiction and on the grounds herewith submitted.

Grounds for motion.

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The Supreme Court of Louisiana states its views of the facts and of the law of the case in the following few words, (p. 33 of the Record) to wit:

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"The Court say, in its opinion in the present case, that "he [the plaintiff in error] is endeavoring to enforce a contract, the consideration of which is confederate currency. The nullity of contracts founded upon that unlawful currency has frequently been determined."

This Court then concludes its opinion thus: "As no federal question appears in the record, the motion to dismiss must be granted."

Louis Janin
of Counsel for Defts in Error